

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SERFRAZ AHMED : ORDER
for Revision of a Determination or for Refund of : DTA NO. 830324
Sales and Use Taxes under Articles 28 and 29 of the :
Tax Law for the Period March 1, 2018 through August :
31, 2019. :
:

Petitioner, Serfraz Ahmed, filed a petition for revision of a determination or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period March 1, 2018 through August 31, 2019.

A formal hearing was scheduled before Administrative Law Judge Alexander Chu-Fong in Brooklyn, New York, on Wednesday, August 16, 2023, at 10:30 a.m. and continuing to Thursday, August 17, 2023, at 10:00 a.m. Petitioner failed to appear, and a default determination was duly issued on October 12, 2023.

Petitioner, appearing pro se, has made a written application, filed on October 27, 2023, that the default determination be vacated pursuant to 20 NYCRR 3000.15 (b) (3). The Division of Taxation, by its representative, Amanda Hiller, Esq. (Eric R. Gee, Esq., of counsel), filed a response on November 27, 2023, which date commenced the 90-day period for the issuance of this order.

Based upon a review of the entire case file in this matter, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following order.

ISSUE

Whether the default determination issued in this matter should be vacated.

FINDINGS OF FACT

1. On February 23, 2021, petitioner, Serfraz Ahmed, filed a petition with the Division of Tax Appeals in protest of two conciliation orders issued to him by the Division of Taxation's (Division's) Bureau of Conciliation and Mediation Services (BCMS). Conciliation order, CMS. No. 000318498, dated January 8, 2021, sustained five notices of determination issued to petitioner for the period March 1, 2018 through May 31, 2019. Conciliation order, CMS. No. 000320848, dated January 8, 2021, sustained a notice of determination issued to petitioner for the period June 1, 2019 through August 31, 2019. Petitioner listed his address as "3 Waverly Place, Coram, NY 11727" on the petition.

2. On or about April 24, 2023, Administrative Law Judge Alexander Chu-Fong sent a letter to the parties informing them that he was assigned to the matter. In this letter, he stated that the hearing would be scheduled for both Wednesday, August 16, 2023 and Thursday, August 17, 2023, in Brooklyn, New York. Additionally, Administrative Law Judge Chu-Fong informed the parties that the Hearing Support Unit would contact them in order to schedule a prehearing conference call to discuss the upcoming hearing.

3. On April 24, 2023, the Hearing Support Unit scheduled a prehearing conference call for May 30, 2023. Administrative Law Judge Chu-Fong held the prehearing conference call at 10:00 a.m. The Division appeared, but petitioner did not. On May 30, 2023, another prehearing conference call was scheduled for August 1, 2023, at 10:00 a.m.

4. On July 11, 2023, a notice of hearing was issued to petitioner, at the address listed on the petition, that scheduled the formal hearing in the above-captioned matter for August 16,

2023, at 10:30 a.m. and continuing to August 17, 2023, at 10:00 a.m., to be held at the Shirley A. Chisholm State Office Building, 55 Hanson Place, 6th Floor, Room 658, Hearing Room 1, Brooklyn, New York 11217. A copy of the notice of hearing was simultaneously sent to the Division.

5. Petitioner did not respond to the notice of hearing.

6. On August 1, 2023, Administrative Law Judge Chu-Fong held a prehearing conference call at 10:00 a.m. as scheduled. The Division appeared, but petitioner did not.

7. On Wednesday, August 16, 2023, at 10:30 a.m., Administrative Law Judge Chu-Fong commenced a formal hearing as scheduled in the *Matter of Serfraz Ahmed*. The Division appeared by its representative. Petitioner did not appear at the hearing. Additionally, petitioner did not submit a written request for an adjournment of the hearing. Consequently, the representative of the Division moved that petitioner be held in default.

8. On October 12, 2023, Administrative Law Judge Chu-Fong issued a default determination against petitioner, denying the petition in this matter.

9. On October 27, 2023, petitioner filed an application to vacate the default determination. In his application, petitioner states that he experienced unexpected health issues. Petitioner explained that his disability, specifically, severe back pain, affects his mobility. He claims that he was physically incapable of traveling to the hearing location. However, he failed to elaborate on the issue or provide any medical documentation. Additionally, petitioner failed to submit any documentation that addressed the merits of his case.

10. In its opposition to the instant application, the Division states that petitioner's position is without merit. The Division argues that petitioner never provided a reasonable excuse for not appearing at the scheduled hearing. The Division notes that although petitioner

claims that he was unable to travel due to his disability, he failed to communicate that to the Division of Tax Appeals, failed to provide any medical documentation of his disability and failed to request an adjournment. Moreover, the Division states that petitioner did not establish a meritorious case.

CONCLUSIONS OF LAW

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules):

“[i]n the event a party or the party’s representative does not appear at a scheduled hearing and an adjournment has not been granted, the administrative law judge shall on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear” (20 NYCRR 3000.15 [b] [2]).

The Rules further provide that, “[u]pon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case” (20 NYCRR 3000.15 [b] [3]).

B. Petitioner did not appear at the scheduled hearing or obtain an adjournment. Therefore, the administrative law judge correctly rendered a default determination pursuant to 20 NYCRR 3000.15 (b) (3) (*see Matter of Hotaki*, Tax Appeals Tribunal, December 14, 2006; *Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995).

C. Once the default determination was issued, it was incumbent upon petitioner to show an acceptable excuse for not attending the hearing and that he had a meritorious case (*see* 20 NYCRR 3000.13 [d] [3]; *Matter of Poindexter*, Tax Appeals Tribunal, September 7, 2006; *Matter of Zavalla*).

The case file shows that the notice of hearing was issued to the parties on July 11, 2023. Petitioner alleges that his medical condition prevented him from attending the hearing.

However, he failed to participate by telephone in either of the prehearing conference calls with the administrative law judge to explain his medical limitations or to request an adjournment.

Also, his unsworn statement without any proof of his medical condition is unpersuasive.

D. Furthermore, petitioner has not established a meritorious case. “In order to meet the meritorious case criterion for vacatur, petitioner must make a prima facie showing of legal merit, and may not rely on conclusory statements unsupported by the facts” (*Matter of Gordon*, Tax Appeals Tribunal, January 29, 2015). Petitioner’s application failed to include any evidence to meet his burden of establishing a meritorious case. As a result, petitioner’s application fails on this prong as well.

E. The application of Serfraz Ahmed to vacate the default determination, dated October 12, 2023, is denied.

DATED: Albany, New York
February 22, 2024

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE